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## RECENT IMPORTANT DECISIONS

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AGENCY—AGENT'S LIABILITY FOR NEGLIGENCE.—The plaintiff, a dealer in fruit, entered into an agreement with a railroad company in which the carrier agreed to transport fruit from Texas to Iowa, the railroad undertaking to furnish the necessary refrigerator equipment for handling the shipments and to put ice into the cars at certain points along the line. The railroad company procured the defendant to furnish the cars required for handling plaintiff's shipments and to ice the cars as agreed between the plaintiff and the railroad company. The defendant negligently loaded and iced the cars containing a cargo of plaintiff's fruit, and as a result it was greatly damaged. *Held*, that the agent was guilty of misfeasance in the performance of its contract with its principal, and for this it was liable directly to the plaintiff. *Emery & Co. v. American Refrigerator Transit Co.* (Ia., 1921), 184 N. W. 750.

In passing upon the liability of the agent to third persons for negligence in the performance of duties devolving upon him by reason of his employment, three theories of liability have been evolved. Following a *dictum* of Lord Holt in *Lane v. Cotton*, 1 Ld. Raym. 646, it has been held that an agent is not liable to the third person for such negligence. *Murray v. Usher*, 117 N. Y. 572 (*dictum*); *Van Antwerp v. Linton*, 35 N. Y. S. 318; *Delaney v. Rochereau & Co.*, 34 La. Ann. 1123; *Albro v. Jaquith*, 4 Gray (Mass.) 99; *Feltus v. Swan*, 62 Miss. 415; *Henshaw v. Noble*, 7 Oh. St. 226; *Drake v. Hagan*, 108 Tenn. 265; *Labadie v. Hawley*, 61 Tex. 177. Other authorities, following what seems to be the reasoning of the principal case, adopt Lord Holt's *dictum*, in which he said that the agent was liable for misfeasance, and hold the agent liable when he has been negligent, on the theory that the negligence converts what otherwise would have been a proper performance of his duties into misfeasance. *Bell v. Josselyn*, 3 Gray (Mass.) 309; *Lottman v. Barnett*, 62 Mo. 159; *Southern Ry. Co. v. Rowe*, 2 Ga. App. 557; *Ellis v. McNaughton*, 76 Mich. 237; *Greenberg v. Lumber Co.*, 90 Wis. 225. The weight of modern authority comes to a similar result, but simply inquires whether the agent has exercised that degree of care in his actions which the law requires in the particular situation. *Lough v. John Davis Co.*, 30 Wash. 204; *Haynes' Admrs. v. C., N. O. & T. P. R. Co.*, 145 Ky. 209; *Schlosser v. G. N. R. Co.*, 20 N. D. 406; *Jacks v. Orth Lumber Co.*, 121 Minn. 461; *Rising v. Ferris*, 216 Ill. App. 252; *Mayer v. Building Co.*, 104 Ala. 611. The difficulties in determining whether the agent owes any duty to third persons. When the agent has been put in control of property, or given other powers which an independent actor would have, it should be held that he owes a duty to third persons to use due care in what he does, the same as any other individual. See 1 MICH. L. REV. 315, where a discussion of the principles involved will be found.